

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KATHLEEN MCCARTNEY	:	CIVIL ACTION
	:	
v.	:	
	:	No. 01-CV-4330
GLAXO SMITH KLINE		
and		
AMERICAN RED CROSS	:	

ORDER-MEMORANDUM

Ludwig, J.

AND NOW, this 20th day of September, 2002, the motion of defendant American Red Cross for summary judgment is denied. Fed. R. Civ. P. 56.

According to the complaint, plaintiff Kathleen McCartney was injured while donating blood during a Red Cross blood drive conducted on the premises of defendant Glaxo Smith Kline. The Red Cross's negligence is alleged to have involved misapplication of a tourniquet and, generally, "the task of drawing blood." Complaint, ¶ 7. The basis for the motion is that causation is an essential element of plaintiff's that requires expert opinion which, assertedly, is not present here or is insufficient to survive summary judgment.

Under Pennsylvania law, a malpractice plaintiff must present an expert "who will testify to a reasonable degree of medical certainty that the defendant's acts deviated from an accepted medical standard, and that such deviation was the proximate cause of the harm suffered." Mitzelfelt v. Kamrin, 526 Pa. 54, 62, 584 A.2d 888, 892 (1990). The expert need not use "magic words" such as "substantial factor" when expressing opinions to make out a prima facie case. Welsh v. Bulger, 548 Pa. 504, 514, 698 A.2d 581, 585 (Pa. 1997). The

meaning of the expert's statement, not the phraseology, is what must be considered. Id.

Reports submitted by plaintiff's medical expert, Richard H. Bennett, M.D., contain the following: "[H]er symptoms and history clearly support the situation. I feel that it has nothing to do with her job as a waitress. It clearly was related to the event itself." (1/28/00 Report). "[I]t is more likely that the injury occurred with direct needle stick rather than the tourniquet application as tourniquet acquired injuries involve direct pressure effects on the nerve that would imply that the application of the tourniquet took place over a much longer period of time than one would particularly expect in a routine venipuncture." (2/19/02 Report).

Although the language of the reports do not track the legal standard of malpractice causation, they unquestionably state that, in Dr. Bennett's opinion, the drawing of the blood, more particularly, the needle stick, constituted causal negligence. On the other hand, the reports also suggest that the application of the tourniquet was not the likely cause of the blood donor's injuries. The question of the admissibility of Dr. Bennett's testimony on this latter issue will be deferred and left to the arbitrators. The doctor's opinion as to the needle stick is enough by itself to withstand the Red Cross's motion.

Edmund V. Ludwig, J.